

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

NLD ROCHESTER LLC,

Plaintiff,

v.

23-CV-6058 DGL

440 LAKE AVENUE, LLC,

Defendant.

**AFFIDAVIT IN SUPPORT OF REQUEST FOR DEFAULT JUDGMENT FOR SUM
CERTAIN and MOTION FOR ATTORNEYS' FEES**

I, Benito J. Hidalgo, being duly sworn, state as follows:

1. I am the Vice President of NLD Holdings, LLC, the sole member of Plaintiff, NLD Rochester LLC, in the above-entitled action and I am familiar with the file, records and pleadings in this matter.
2. The amount due in this action is:

Principal Demanded	\$83,888.00
Interest: ¹	\$8,106.56
Costs and Disbursements: ²	\$496.46
Total:	\$92,491.02

3. This action was filed on or about January 23, 2023.

¹ Interest is being calculated from March 23, 2022 to April 19, 2023 at 9% per annum as stated in CPLR §5004 (totaling \$7,549.92 per annum or \$20.68 per diem). *See Erie R. Co. v. Tompkins*, 304 US 64 (1938).

² Including charges of \$402.00 for filing fees, \$78.00 for service of summons and complaint, and \$16.46 for Westlaw research.

4. Defendant did not file an answer in the above-entitled action and time to do so has lapsed.
5. In accordance with Federal Rule 55(a) of the Federal Rules of Civil Procedure, the Clerk of the Court entered a Certificate of the Entry of Default against the Defendant, 440 Lake Avenue, LLC on April 13, 2023.
6. Upon information and belief, the amount of \$92,491.02 is justly due and owing and no part thereof has been paid except as herein set forth.

The Basis for Attorneys' Fees

7. On behalf of NLD Rochester LLC, I signed a certain Assignment and Assumption of Lease (the "Assignment") with David J. Pelusio, Sr., on behalf of 440 Lake Avenue, LLC. Dkt. No. 1-1.
8. By signing the Assignment, 440 Lake Avenue, LLC agreed to, among other things, assign its right to accept and retain lease payments at issue in the present action.
9. In the section 4 of the Assignment, 440 Lake Avenue, LLC agreed to:

indemnify [NLD Rochester LLC] against, and agrees to defend and hold [NLD Rochester LLC] harmless of and from, all liabilities, obligations, actions, suits, proceedings or claims, and all losses, costs and expenses, including but not limited to reasonable attorneys' fees, arising as a result of *any act, omission or obligation of* [440 Lake Avenue, LLC] arising or accruing with respect to the Lease prior to the Effective Date.
10. The Effective Date of the Assignment is January 26, 2021.
11. Upon information and belief, 440 Lake Avenue, LLC has accepted and wrongly holds rent paid by the tenant, Speedway, LLC, since on or about February 18, 2021. Dkt. No. 1-2.

12. The wrongly held rent is a liability arising due to the acts of 440 Lake Avenue, LLC which arose after the Effective Date of the Assignment.
13. Despite due demand and the commencement of the present action, 440 Lake Avenue, LLC has declined to pay NLD Rochester LLC the money wrongly accepted.
14. Additionally, NLD Rochester LLC has paid or will be required to pay the attorneys' fees set forth in the Radley Declaration and Ratliff Affidavit.
15. The disbursements set forth in this affidavit and sought to be taxed have been made in the action or will necessarily be made or incurred therein.

Dated April 24, 2023


Benito J. Hidalgo

Sworn to and subscribed before
Me this 24th day of April, 2023.


Notary Public

